

CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 707

CLARA SCHNEIDER, PETITIONER,

VS.
THE STATE (TOWN OF IRVINGTON)

ON WRIT OF CERTIORARI TO THE COURT OF ERRORS AND APPEALS
OF THE STATE OF NEW JERSEY

PETITION FOR CERTIORARI FILED FEBRUARY 27, 1939.

CERTIORARI GRANTED APRIL 3, 1939.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 707

CLARA SCHNEIDER, PETITIONER,

vs.

THE STATE (TOWN OF IRVINGTON)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 8, 1939.

[fol. 1] **IN SUPREME COURT OF NEW JERSEY.**

On Certiorari.

THE STATE (Town of Irvington), Plaintiff-Respondent,

v.

CLARA SCHNEIDER, Defendant-Prosecutrix.

NOTICE OF APPEAL AND GROUNDS

To Meyer Q. Kessel, Esq., Attorney for Plaintiff-Respondent. Essex County Court of Common Pleas and to the Clerk of the Essex County Court of Common Pleas,

SIRS:

Please take notice that the defendant-prosecutrix in the above entitled cause appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause on the following grounds, to wit:

1. Because the Supreme Court erred in giving judgment to the plaintiff-respondent instead of the defendant-prosecutrix, in that:

(a) The ordinance of the Town of Irvington known as "an Ordinance regulating canvassing within the Town of Irvington and providing penalties for the violation thereof", upon which the Court of Common Pleas of Essex County based its judgment of conviction, is unconstitutional and violative of both the State and Federal Constitutions insofar as it attempts to prohibit the kind of work engaged in by the defendant-prosecutrix as set forth in the stipulation of facts, in that it deprives the defendant-prosecutrix of the right to worship Almighty God in a manner agreeable to the dictates of her own conscience (N. J. Constitution, Art. 1, Sec. 3) and to the liberty of peoples generally (ibid, Art. 1, Sec. 1), and also violates the provisions of Sec. 1 of the Fourteenth Amendment to the Constitution of the United States in that it unreasonably restricts and denies the free exercise and enjoyment of religious profession and worship of the defendant-prosecutrix.

(b) The complaint is insufficient in that it fails to charge an offense.

(c) The evidence submitted before the Essex County Court of Common Pleas was not sufficient on which to convict the said defendant-prosecutrix.

(d) The ordinance marked Exhibit S 1 under which the defendant-prosecutrix was convicted is not applicable under the evidence submitted before the Essex County Court of Common Pleas.

(e) This being a Christian nation, it may not be assumed that a legislative body, in the absence of express language to the contrary, intended to legislate against the worship of Jehovah God and the peaceable and moral practice of a Christian doctrine.

(f) The act of the defendant-prosecutrix was outside of the provision of the ordinance, and the defendant-prosecutrix, in and about her work as shown by the evidence submitted before the Essex County Court of Common Pleas was not amenable to its provisions.

[fol. 3] (g) The ordinance here involved is invalid in itself and as applied to the acts of the defendant-prosecutrix under the provisions of the Constitution of this State, and of the Fourteenth Amendment to the Constitution of the United States in that it unreasonably restricts the freedom of speech of defendant-prosecutrix.

Respectfully yours, Jacob S. Karkus, Attorney for Defendant-Prosecutrix.

Sat Below: Brogan, Chief Justice, Justices Trenchard and Parker.

Service of a true copy of the within Notice of Appeal and Grounds is hereby acknowledged this 21st day of September, 1938.

(Signed) Meyer Q. Kessell, Attorney for Plaintiff-Respondent.

[fol. 4] IN SUPREME COURT OF NEW JERSEY

WRIT OF CERTIORARI

(L. S.)

Essex County Court of Common Pleas and to the Clerk of the Essex County Court of Common Pleas, Greeting:

We being willing, for certain reasons, to be certified of the judgment of conviction, order and proceedings given

and made by the Court of Common Pleas of Essex County, in a certain proceeding brought against Clara Schneider, by the Town of Irvington, in which, as appears, judgment of conviction was rendered against the said Clara Schneider on the 12th day of May, 1937;

We do command you, the said Essex County Court of Common Pleas and the Clerk of the Essex County Court of Common Pleas, that the judgment of conviction, and all proceedings in the aforesaid proceeding before the Essex County Court of Common Pleas, together with all papers and things touching or appertaining to the same, as fully and entirely before you they remain, to our Justices of our Supreme Court of Judicature at Trenton on fifteenth of July next, you certify and send, together with this writ, that therein may be done what of right and according to the laws of the State of New Jersey should be done.

Witness, Thomas J. Brogan, Esquire, Chief Justice of our Supreme Court at Trenton, this 25th day of June, in the year of our Lord one thousand nine hundred and thirty-seven.

Fred L. Bloodgood, Clerk.

Jacob S. Karkus, Attorney for Prosecutor.

[fol. 5] I allow the within writ. Let it be sealed. Let the defendant be paroled in the custody of Jacob S. Karkus, no bond to be furnished.

J. L. Bodine, Justice, Supreme Court.

Dated, June 25, 1937.

IN COURT OF COMMON PLEAS OF ESSEX COUNTY

CERTIFICATE ACCOMPANYING RETURN

STATE OF NEW JERSEY,
County of Essex, ss:

I, Richard Hartshorne, Judge of the Court of Common Pleas, in and for the County of Essex, State of New Jersey, and Russell C. Gates, Clerk of the Court of Common Pleas in and for the County of Essex, State of New Jersey, Do Hereby Certify and return to the Supreme Court of Judicature of the State of New Jersey, the record of conviction of the Police Court of the Town of Irvington, New Jersey, in

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the case of The State (Edward Durning), Complainant, vs. Clara Schneider, Defendant, and Order of the Court of Common Pleas, together with all things touching and concerning the same as by the within writ to us directed and as commanded.

In Witness whereof, we have hereunto set our hands and Official Seal, this seventh day of October, A. D. 1937.

Richard Hartshorne, Judge of the Court of Common Pleas, Essex County, New Jersey. Russell C. Gates, Clerk of the Court of Common Pleas, Essex County, New Jersey. (Seal.)

[fol. 6] IN RECORDER'S COURT, IRVINGTON, NEW JERSEY

EDWARD DURNING, Complainant,

v.

CLARA SCHNEIDER, Defendant

NOTICE AND GROUNDS OF APPEAL—Filed December 21, 1935.

To His Honor Thomas Holleran, Recorder of the Police Court of the Town of Irvington, or To Whom It May Concern:

Please take notice that I, the undersigned, hereby appeal to the Essex County Court of Common Pleas from the whole of the judgment of conviction, which you rendered against me on December 17, 1935, on the charge of having violated an ordinance concerning canvassing, said judgment having been rendered in your Court known as the Police Court of the Town of Irvington.

This appeal is taken to the Essex County Court of Common Pleas, and the grounds for the said appeal are as follows:

- (a) The ordinance is unconstitutional.
- (b) The ordinance is invidious and vicious and goes beyond the occasion of its enactment.
- (c) The Court found as a fact that the defendant did violate the ordinance by canvassing when there was no proof offered or admitted during the trial from which the Court

[fol. 7] could have found as a matter of fact that the defendant had violated the ordinance in the particular manner.

Wherefore, the defendant hereby appeals to the Essex County Court of Common Pleas, who is empowered to hear and determine the same and give a trial de novo.

Respectfully, Jacob S. Karkus, Attorney.

IN COURT OF COMMON PLEAS, COUNTY OF ESSEX

THE STATE (Town of Irvington), Complainant,

v.

CLARA SCHNEIDER, Defendant

STIPULATION AS TO EVIDENCE

It is hereby stipulated between Meyer Q. Kessel, Esq., Attorney for complainant of record, and Jacob S. Karkus, Esq., Attorney for the defendant, Clara Schneider, that the stipulation entered into in the case of The State (Officer Harrison Hart) v. Clara Schuster between Meyer Q. Kessel and Abram Waks, Esquires, dated November 16, 1936, together with the exhibits therein mentioned, were presented in evidence before Hon. Richard Hartshorne, Judge of the Court of Common Pleas of Essex County, for his consideration in the above captioned case, with the understanding that the substance of facts therein stated apply to the defendant herein.

Meyer Q. Kessel, Attorney of Complainant. Jacob S. Karkus, Attorney of Defendant.

Dated, October 15, 1937.

IN COURT OF COMMON PLEAS, COUNTY OF ESSEX

THE STATE, OFFICER HARRISON, HART, Complainant,

v.

CLARA SCHUSTER, Defendant

STIPULATION IN SCHUSTER CASE

It is hereby stipulated and agreed between Meyer Q. Kessel, Attorney for the Town of Irvington, N. J., and

Abram Waks, Attorney for the defendant Clara Schuster, that the following testimony and documents shall be considered as having been presented in evidence before Hon. Richard Hartshorne, Judge of the Court of Common Pleas of Essex County, for his consideration in the above captioned case.

1. That on February 16, 1936, an ordinance regulating canvassing was lawfully in effect in the Town of Irvington, a copy of which ordinance is marked Exhibit "S-1".

[fol. 9] 2. That on February 16, 1936, defendant Clara Schuster did call from house to house in the Town of Irvington, and did show to occupants of several houses therein a certain card of testimony and identification issued to defendant by the Watch Tower Bible and Tract Society as one of Jehovah's witnesses, and did leave or offer to leave with said occupants certain books or booklets, for which defendant solicited or accepted contributions in the form of money, which card, books and booklets are marked as exhibits herein, to wit:

Testimony and Identification Card, marked Exhibit "S-2";

Golden Age, number 427, marked Exhibit "S-3";

Booklet Government, marked Exhibit "S-4";

Booklet Escape to the Kingdom, marked Exhibit "S-5".

3. Defendant Clara Schuster did not apply for or obtain a permit from the police department in conformance with the ordinance, because she conscientiously believed and maintained that to apply for said permit would be an act of disobedience to the command of Almighty God.

4. Defendant Clara Schuster is a Christian and one of Jehovah's witnesses, who are engaged in preaching the Gospel by expounding the word of God, either orally or in printed form, to persons by going from house to house, which work defendant alleges is done in obedience to the mandate of Almighty God.

5. That defendant Clara Schuster was so engaged on February 16, 1936, in said Town of Irvington, when she went from house to house and presented said card and

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[fols. 10-12] offered to leave or did leave said book or book-lets and solicited or received contributions in the form of money.

Dated: November 16, 1936.

Meyer Q. Kessel, Attorney of Complainant. Abram Waks, Attorney of Defendant.

Bond on appeal for \$200.00 approved, omitted in printing.

[fol. 13] DEPARTMENT OF PUBLIC SAFETY

Washington Avenue, Between Clinton and Springfield
Avenues

IN RECORDER'S COURT OF THE TOWN OF IRVINGTON

Thomas J. Holleran, Recorder

Complaint for Section 1 Ordinance 1437

THE STATE, OFFICER EDWARD DURNING, Complainant, No.
Police Department, Town or City Irvington, N. J.

v.

CLARA SCHNEIDER, Defendant, No. 365 Grove Street, Town
or City Newark, N. J.

COMPLAINT

TOWN OF IRVINGTON,
County of Essex,

State of New Jersey, ss:

Edward Durning, being duly sworn, on his oath says that on the seventh day of December, 1935, at about 2:20 o'clock P. M. at or near No. 138 Hall Street, in the Town of Irvington, County of Essex, State of New Jersey, one Clara Schneider did violate the provision of Section 1 Ordinance 1437 of the Town of Irvington, N. J., entitled "An Ordinance regulating canvassing within the Town of Irvington and providing penalties for the violation thereof" in that she did canvass without first having reported to and re-

ceived a written permit from the Chief of Police or the Officer in Charge at Police Headquarters.

Wherefore, the said complainant complains against said [fol. 14] defendant and prays that he may be apprehended and dealt with according to law.

Edward Durning, Complainant.

Subscribed and sworn to before me this 7 day of December, 1935. Thomas J. Holleran, Recorder of the Town of Irvington.

IN RECORDER'S COURT, TOWN OF IRVINGTON

RECORD OF CONVICTION

Defendant's age: —.
 Occupation: —.
 Place: —.
 Date arrested: Saturday December 7, 1935.
 Date summoned: —.
 Date to appear before Judge: Tuesday December 17, 1935 at 9:30 A. M.
 How disposed of: —.
 Witnesses: Elsie Brunner, 138 Ball Street, Irvington, N. J. Margaret Sewerd, 132 Ball Street, Irvington, N. J.
 Plea of Not Guilty—Guilty Fine \$100 or Thirty (30) days in Jail.
 December 20th, 1935. Notice of Appeal served on this court.

ORDINANCE

Ordinance No. 1437.

Ordinance Regulating Canvassing Within the Town of Irvington and Providing Penalties for the Violation Thereof

Be it Ordained by the Board of Commissioner of The Town of Irvington, in the County of Essex, State of New Jersey, as follows:

[fol. 15] Sec. 1. No person except as in this ordinance provided shall canvass, solicit, distribute circulars, or other matter, or call from house to house in the Town of

Irvington without first having reported to and received a written permit from the Chief of Police or the officer in Charge at Police Headquarters:

Sec. 2. The Chief of Police or in his absence the officer in charge at Police Headquarters shall have power to grant permit to canvass, which permit shall specify the number of hours or days that the permit will be in effect and such officer shall refuse to issue a permit in all cases where the application of the canvasser or further investigation to be made at the discretion of such officer, shows that the canvasser is not of good character, or that he is canvassing for a project not free from fraud. The Chief of Police or in his absence the officer in charge at Police Headquarters shall revoke the permit for failure or refusal on the part of the permittee to observe the rules and regulations herein set forth.

Sec. 3. Before the permit may be issued the canvasser shall make an application to canvass, giving his or her full name and address, age, height, weight, place of birth, whether married or single, length and place of residence, whether or not previously arrested or convicted of crime, by whom employed, address of employer, clothing worn and description of project for which he or she is canvassing. Each applicant shall be finger printed and photographed before a permit shall be issued.

Sec. 4. Rules and Regulations:

No person shall canvass within the Town, except between the hours of 9 a. m. and 5 p. m. A copy of the permittee's photograph shall be carried on his or her permit, which photograph shall be furnished by the applicant. The permittee shall exhibit his or her permit to any police officer or other person upon request. The permittee shall [fol. 16] be courteous to all persons in canvassing and shall not importune or annoy any of the inhabitants of the Town and shall conduct himself or herself in a lawful manner. On expiration of the permit, the holder thereof shall surrender the same to the officer in charge at Police Headquarters.

Sec. 5. This ordinance shall not affect any person engaged in the delivery of goods, wares, or merchandise or other articles or things in the regular course of business

to the premises of persons ordering or entitled to receive the same.

Sec. 6. Any person violating the provisions of this ordinance shall be subject to a fine not exceeding One Hundred Dollars (\$100.00) or to imprisonment in the County Jail for a period not exceeding thirty days. In the event of the imposition of a fine and default in the payment thereof the defendant may be imprisoned in the County Jail for a term not exceeding thirty days.

Sec. 7. This ordinance shall take effect on final passage and publication according to law.

Adopted September 10, 1935.

(Signed) J. Edward Jacobi, Herbert Kruttschnitt,
Harry E. Stanley, Percy A. Miller, Commissioners.

Attested by Town Clerk.

[fol. 17] IN COURT OF COMMON PLEAS OF ESSEX COUNTY

On Appeal from Summary Conviction

THE STATE, EDWARD DURNING, Complainant-Appellee,

v.

CLARA SCHNEIDER, Defendant-Appellant

ORDER AFFIRMING CONVICTION—Filed May 13, 1937

This matter being opened to the Court by Meyer Q. Kessel, Attorney for the complainant-appellee, in the presence of Jacob S. Karkus, Esq., appearing for the defendant-appellant, and it appearing to the Court that by stipulation entered into between counsel for the parties hereto, it was agreed that the result to be reached by this Court in the appeal of Clara Schuster, William Dickinson and Amanda Morgan from their convictions in the Irvington Recorder's Court, should control the disposition of this appeal.

And it appearing to the Court that the facts as stipulated in the appeals hereinbefore referred to are similar in all respects and involve the same question of law, and the Court having considered the same and having found the said Clara Schuster, William Dickinson and Amanda Morgan guilty of having violated Ordinance No. 1437 of the

Town of Irvington referred to in the complaints made against the said appellants, and having affirmed the said convictions, now therefore,

[fol. 18] The defendant-appellant, Clara Schneider, on this 12th day of May, 1937, be and she is hereby found guilty of violating Ordinance No. 1437 of the Town of Irvington, as charged in the complaint made against her;

And it is Ordered that the judgment of conviction entered in the Recorder's Court of the Town of Irvington against the said defendant-appellant, Clara Schneider, be and the same is hereby affirmed;

And it is further Ordered that the said Clara Schneider appear before the Court of Common Pleas of the County of Essex on the 24th day of May, 1937, to receive the sentence of this Court then and there to be imposed.

Richard Hartshorne, Judge.

Appearance for the purpose of the above Order noted.

Jacob S. Karkus, Attorney for Defendant-Appellant.

[fol. 19] IN COURT OF COMMON PLEAS OF ESSEX COUNTY

THE STATE

v.

ELIZABETH WHEELER, LOUIS LEGRANGE, DANIEL BARNES,
Tito D. Santo, Clara Schuster, William Dickinson, and
Amanda Morgan, Defendants

On Appeal from Summary Conviction

For the State (Town of Irvington) appears Meyer Q. Kessel, Esq.

For the defendants appear Abram Waks, Esq., and O. R. Moyle, Esq., of the Wisconsin Bar.

OPINION IN SCHUSTER CASE

HARTSHORNE, J.:

A group of individuals calling themselves "Jehovah's witnesses", incorporated under a different name under the laws of Pennsylvania, have, during the last few years, been almost continuously in conflict with the authorities through-

out northern New Jersey, if not elsewhere. This conflict has been due, practically entirely, to the insistence of this group on their absolute right, without any regulation whatsoever, to go from house to house at any hour of the day or night, to distribute their literature and solicit subscriptions. This disturbance of the peace and quiet of our citizens in their homes, let alone the possible danger to the inhabitants in having strangers in the community, unknown to the police, going from house to house by day and night, has been repeatedly held unlawful by the courts, [fol. 20] under ordinances lawfully enacted in a series of municipalities for the protection of their inhabitants. A glance at merely the list of the below cited cases, all dealing with this very question, makes one wonder whether the group, due to their emotional state, are unable to comprehend the principles of law involved and so repeatedly decided.

Dziatkiewicz v. Parker, 115 N. J. L. 37;

Bergenfield v. Peterson, 7 Misc. 1019;

Maplewood v. Albright, 13 Misc. 46;

Semansky v. Common Pleas, 13 Misc. 589;

Nutley v. Zaryk, Essex Common Pleas, April 19, 1934, unreported;

Maplewood v. Hesler, Essex Common Pleas, October 11, 1934, unreported.

While such situation may be understandable on the part of the lay members of the group, it is incomprehensible in their legal advisors, themselves officers of the court, sworn to uphold the law. For them to advise their clients, in the face of such repeated decisions, to continue to violate such principles of law, constitutes a violation of the ethics of the profession, if it is not in fact a contempt of the courts which have laid down such principles. (American Bar Association Code of Ethics, Section 32.)

Since this aspect of the matter has apparently not occurred to those who have been the repeated legal advisors of the group, it might savour of harshness to act upon such principles before warning is given. But that this warning may be clear, that it may be definite both to the legal advisors and to those advised, the court will restate in all patience the principles involved and so oft decided.

There are no absolute rights in any individual in any community, civilized or uncivilized. In an uncivilized com-

munity there are no rights as such, for might makes right. In a civilized community all have rights, and therefore the [fol. 21] rights of each must be exercised with due regard for the rights of others. This applies to all rights referred to in a Constitution, to the "privilege of worshipping Almighty God" (New Jersey Constitution, article I, Section 3) to the freedom of speech (Ibid, article I, section 5) and to the liberties of the people generally (Ibid, article I, section 1; United States Constitution, Amendment 14). For our state constitution itself expressly refers to the "abuse of" the freedom of speech. And while generally in this country people have "the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine," such right is expressly conditioned upon the fact that it "does not violate the laws of morality and property and does not infringe personal rights" (Watson v. Jones, 13 Wallace 679; Cooley, Constitutional Limitations, page 663.)

6 The action of the group here does invade both personal and property rights. They invade the personal rights of the citizens when they insist upon invading their private homes at any hour of the day or night. They invade their property rights by the same token. In making such invasions among the citizenry generally, they similarly invade the rights of the public. All of these rights the representatives of the public have not only the right, but the duty, to protect under the police power. When such regulations are promulgated by the duly constituted representatives of the public, it is not for the courts to set them aside unless they are purely arbitrary and without basis in reason, and as long as they exist, they govern all within their jurisdiction. To require, as in the ordinance in question here, (Irvington ordinance No. 1437), that the house to house canvasser shall not receive a canvassing permit, if either he is "not of good character," or if he is "canvassing for a project not free from fraud," cannot by the wildest stretch of the imagination be called unreasonable. [fol. 22] Nor, in the face of the all too frequent burglaries in the metropolitan section, and the necessity for a reasonable amount of peace in one's home, can it be said to be without reason, to prohibit canvassing from house to house in the hours of the early morning or after nightfall.

The above is all upon the hypothesis that this disturbing of the citizens in their homes at unseasonable hours is "the worshipping Almighty God", preserved, but subject to limitations, in the provisions of the New Jersey constitution cited supra. But that such canvassing is not "worshipping Almighty God" seems obvious on its face. In common parlance at least, and the Constitution is meant for the common understanding, my own worship of God is a different thing from my inducing others to worship as I do. It is the latter only of which the defendants' house to house canvassing consists.

That the scriptural words, "as ye enter into the house salute it" (Matthew 10:12) relied on by defendants, are no mandate governing worship itself, seems equally clear. That they are not even to be taken literally is also clear. For the immediately preceding verses are: "Provide neither gold nor silver nor brass in your purses; nor scrip for your journey, neither two coats, neither shoes." (Matthew 10:10 and 11). If these are literal mandates "Jehovah's witnesses" themselves violate them daily. Further, how can the group object to a reasonable canvassing permit when they are willing to take out automobile licenses in order to do such canvassing, and pay incorporation fees in order to conduct their entire, allegedly religious operations? However, even assuming this house to house canvassing to be "worshipping Almighty God," it is subject to the reasonable regulations here in effect as above stated.

Nor is there the slightest evidence of a denial of the equal protection of the law in the enforcement of the ordinance. [fol. 23] If it should appear that other groups professing a religious purpose are systematically permitted to violate the ordinance, while the "Jehovah's witnesses" are not, the courts lie open; as they do also in the event of the denial to the defendants of canvassing permits for other causes than bad character or fraudulent project. But no such situation is here shown to exist. Nor can the group take comfort from *Coughlin v. Sullivan*, 100 N.J.L. 42, or *State v. DeLaney*, 1 Misc. 619. In the *Coughlin* case the court found as a fact that the purpose of the ordinance was to prevent the littering of the streets, and that the acts in question would not so result. Here the purpose is to pro-

fect the citizens in their homes, particularly at unseasonable hours. This purpose would be nullified by defendants' acts, if uncontrolled. In the Delaney case the alleged acts of worship were so conducted, in a church, as to interfere with the rights of others, public or private. The exact opposite exists here as previously stated. That it was the intent of the ordinance in question to cover all whose acts had the result sought to be guarded against, whether the purpose of the canvassing was purely commercial, purely religious, or partially both, is evident from the generality of the terms of the ordinance itself.

The court might further call attention to the decision of our Court of Errors and Appeals in *Harwood v. Trembly*, 97 N.J.L. 173, cited in *Coughlin v. Sullivan*, supra, relied on by defendants, as follows:

"The constitutional guaranty of liberty of speech no more authorizes a citizen to appropriate to his own use the public property of a community for the purpose of exercising that guaranty, than it permits him to occupy in invitum the private property of a fellow citizen for the same purpose."

[fol. 24] In other words, in the *Harwood* case the defendants had no right to obstruct the streets by a meeting, without permit, for the alleged purpose of free speech. So here they have no right to invade the private homes of citizens at all hours in invitum, for alleged free speech, worship or otherwise, in violation of valid regulations by the lawful representatives of the public.

When defense counsel advise their clients clearly and calmly of the above principles, the latter will know that they are fully free to carry on their house to house canvassing through all reputable individuals for all lawful purposes, religious or otherwise, as long as they do so with due regard to the rights of others, as determined by the representatives of the public. Surely no professing Christian can fail to have due regard for the rights of others.

The convictions of the defendants will be affirmed.

Dated, Feb. 26, 1937

Richard Hartshorne, Judge.

[fol. 25] IN COURT OF COMMON PLEAS OF ESSEX COUNTY

THE STATE, EDWARD DURNING, Complainant-Appellee,

v.

CLARA SCHNEIDER, Defendant-Appellant

NOTICE OF MOTION TO DISMISS APPEAL—Filed January 25,
1937

To Jacob S. Karkus, Esq., Attorney for Defendant-Appellant, 313 State St., Perth Amboy, N. J.

DEAR SIR:

Please take notice, that on Monday, the 25th day of January, 1937, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard, I shall make application to the Honorable Richard Hartshorne, one of the judges of our said Court at the Court House, High St., Newark, N. J., for an Order dismissing the within appeal on the ground that the said defendant-appellant, Clara Schneider, has not put the within appeal on the list for trial at the next term of court after the within cause had been appealed, pursuant to the statute in such case made and provided.

Meyer Q. Kessel, Attorney for Complainant-Appellee.

Dated, January 15th, 1937.

[fol. 26] IN SUPREME COURT OF NEW JERSEY

CLARA SCHNEIDER, Prosecutor,

THE STATE (Town of Irvington), Defendant

NOTICE OF ARGUMENT—Filed November 22, 1937

To County Clerk of Essex County and Meyer Q. Kessel, Attorney for Town of Irvington.

Please take notice that on January 18, 1938, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, I shall move the argument in the above matter before the New Jersey Supreme Court, Part II, State House, Trenton, New Jersey, and urge the reasons filed in this case as grounds for the setting aside of the affirmance in the proceeding had in the Court of Common Pleas on an appeal

of a conviction entered by Thomas Holleran, Recorder of the Police Court of the Town of Irvington, in a suit in which The State (Officer Edward Durning, Town of Irvington) was complainant and Clara Schneider was defendant.

Jacob S. Karkus, Attorney for Prosecutor.

Service of a true copy of Notice of Argument of the above entitled matter is hereby acknowledged this 9th day of November, 1937.

Russell C. Gates, County Clerk of Essex County.

[fol. 27] Service of a true copy of Notice of Argument of the above, entitled matter is hereby acknowledged this 9th day of November, 1937.

Meyer Q. Kessel, Attorney for Town of Irvington.

IN SUPREME COURT OF NEW JERSEY

CLARA SCHNEIDER, Prosecutor,

v.

THE STATE (Town of Irvington), Respondent

REASONS FOR REVERSAL—Filed October 23, 1937.

The said prosecutor, by her attorney, comes and prays that the judgment of conviction of the Essex County Court of Common Pleas, may be set aside, reversed, and for nothing holden, for the following reasons:

1. The ordinance of the Town of Irvington known as "An Ordinance regulating canvassing within the town of Irvington and providing penalties for the violation thereof," upon which the Court of Common Pleas of Essex County based its judgment of conviction, is unconstitutional and violative of both the State and Federal Constitutions insofar as it attempts to prohibit the kind of work engaged in by the prosecutor as set forth in the stipulation of facts, in that it deprives the prosecutor of the right to worship [fol. 28] Almighty God in a manner agreeable to the dictates of her own conscience (N. J. Constitution, Art 1, Sec. 3) and to the liberty of peoples generally (ibid, Art. 1, Sec. 1), and also violates the provisions of Sec. 1 of the Fourteenth Amendment to the Constitution of the United States in that it unreasonably restricts and denies the free exercise and enjoyment of religious profession and worship of the prosecutor.

2. The complaint is insufficient in that it fails to charge an offense.

3. The evidence submitted before the Essex County Court of Common Pleas was not sufficient on which to convict the said prosecutor.

4. The ordinance marked Exhibit S-1 under which the prosecutor was convicted is not applicable under the evidence submitted before the Essex County Court of Common Pleas.

5. This being a Christian nation, it may not be assumed that a legislative body, in the absence of express language to the contrary, intended to legislate against the worship of Jehovah God and the peaceable and moral practice of a Christian doctrine.

6. The act of the prosecutor was outside of the provision of the ordinance, and the prosecutor, in and about her work as shown by the evidence submitted before the Essex County Court of Common Pleas, was not amenable to its provisions.

7. The ordinance here involved is invalid in itself and as applied to the acts of the prosecutor under the provisions of the Constitution of this State, and of the Fourteenth Amendment to the Constitution of the United States in that it unreasonably restricts the freedom of speech of prosecutor.

Jacob S. Karkus, Attorney for Prosecutor.

[fol. 29] IN COURT OF ERRORS AND APPEALS OF NEW JERSEY

THE STATE (Town of Irvington), Plaintiff-Respondent,

v.

CLARA SCHNEIDER, Defendant-Prosecutrix,

NOTICE OF ARGUMENT

To Meyer Q. Kessel, Esq., Attorney for Plaintiff-Respondent. Essex County Court of Common Pleas and to the Clerk of the Essex County Court of Common Pleas:

Please take notice that on Tuesday, October 18, 1938, at ten o'clock in the forenoon, or as soon thereafter as counsel

can be heard, I shall move the argument in the above matter before the Court of Errors and Appeals, State House, Trenton, New Jersey, and urge the ground of appeal and the reasons filed in this case as grounds for the setting aside of the affirmance in the proceeding had in the Court of Common Pleas on an appeal of a conviction entered by Thomas Holleran, Recorder of the Police Court of the Town of Irvington, in a suit in which The State (Officer Edward Durning, Town of Irvington) was complainant and Clara Schneider was defendant.

Jacob S. Karkus, Attorney for Defendant-Prosecutrix.

Sat Below: Brogan, Chief Justice, Justices Trenchard and Parker.

[fol. 30] IN COURT OF ERRORS AND APPEALS OF NEW JERSEY

[Title omitted]

AFFIDAVIT OF SERVICE

STATE OF NEW JERSEY,

County of Middlesex, ss:

Seymour Turner, being duly sworn, according to law, upon his oath deposes and says:

1. I am connected with the office of Jacob S. Karkus, Esq., attorney for defendant-prosecutrix in the above entitled matter.

2. On September 22, 1938, I served a true copy of Notice of Argument in the above entitled matter on Meyer Q. Kessel, Esq., attorney for plaintiff-respondent in the above entitled matter, by handing said true copy of Notice of Argument to him personally, at his office, 1060 Broad Street, Newark, New Jersey.

Seymour Turner.

Sworn and subscribed to before me this 23rd day of September, 1938. Adele M. Brown, a Notary Public of New Jersey.

[fol. 31] IN SUPREME COURT OF NEW JERSEY

THE STATE (TOWN of Irvington), Plaintiff-Respondent,

v.

CLARA SCHNEIDER, Defendant-Prosecutrix

REMITTITUR—Filed August 10, 1938

This matter coming on to be heard at the January Term, 1938, before this Court on a Writ of Certiorari and the Court having inspected the transcript and proceedings of the Court of Common Pleas of the County of Essex, returned with the certiorari in this cause, and the reasons for reversing the judgment below, and having read the briefs of counsel therein, and having duly considered the same;

It is on this 10th day of August, 1938,

Ordered, that the judgment of the Court of Common Pleas of the County of Essex, be in all things affirmed; and that the Writ of Certiorari herein be dismissed, with costs; and that the record and proceedings be remitted to the said Court of Common Pleas of the County of Essex to be therein proceeded with according to law and the practice of the said Court.

Entered August 10th, 1938. On motion of Meyer Q. Kessel, Attorney for Plaintiff-Respondent.

A true copy.

Fred L. Bloodgood, Clerk.

[fol. 32] IN SUPREME COURT OF NEW JERSEY, JANUARY TERM,
1938

No. 207

THE STATE (TOWN of Irvington), Plaintiff-Respondent,

v.

CLARA SCHNEIDER, Defendant-Prosecutrix

Submitted January 18, 1938; Decided July 20, 1938

On Certiorari, etc.

Before Brogan, Chief Justice, and Justices Trenchard and Parker

For defendant-prosecutrix, Jacob S. Karkus (O. R. Moyle, of the New York Bar, on the brief).

For plaintiff-respondent, Meyer Q. Kessel (Thomas L. Hanson, of Counsel).

OPINION

PER CURIAM :

The record in this case is confusing and indeed incomplete in certain respects.

However, it indicates that the prosecutrix of the writ (hereinafter called the defendant), together with others, were individuals calling themselves Jehovah's witnesses. They were arrested, and convicted by the recorder's court in Irvington, charged with the violation of the provisions of the canvassing ordinance of the town in that they did canvass without having first reported to and received a written permit as required by the ordinance. The group, or at least several of them, took an appeal to the Essex County Court of Common Pleas and that court seems to have found them guilty, and we have here now a writ of certiorari obtained by the defendant Clara Schneider.

[fol. 33] Neither the evidence in the recorder's court nor the evidence in the common pleas court is returned to us as such. We have, however, a stipulation that the defendant "did call from house to house in the town of Irvington and did show to the occupants of several houses therein * * * and did leave or offer to leave with said occupants certain books or booklets for which defendant solicited or accepted contributions in the form of money"; that said defendant "did not apply for or obtain a permit from the police department in conformance with the ordinance, because she conscientiously believed and maintained that to apply for such permit would be an act of disobedience to the command of Almighty God."

The ordinance in question prohibited such canvass and solicitation by calling from house to house without having first reported to and received a written permit from the Chief of Police, or the officer in charge at Police Headquarters.

The defendant says in her brief "We recognize that in a few cases involving Jehovah's witnesses this court has upheld ordinances such as the one in question as being a reasonable exercise of the police power. We do not question such ruling"; but she nevertheless seems to contend (1) that the ordinance unreasonably restricts and denies freedom of speech and freedom of the press; and (2) that the

town did not show that the acts complained of were inimical to public welfare.

We think that these contentions are plainly without substance and that they have all been considered and decided and overruled in prior decisions, namely, *Dziatkiewicz vs. Maplewood*, 115 N. J. L. 37; *Bergenfield vs. Peterson*, 7 Misc. 1019; *Maplewood vs. Albright*, 13 Misc. 46; *Semansky vs. Common Pleas*, 13 Misc. 589. Those cases, amongst others that might be cited, are authority so far as this court is concerned.

[fol. 34]. It may be well to note in passing that there is nothing in the evidence produced before us to disclose that the defendant was engaged in the mere distribution of books or booklets in the furtherance of religious principles. There was something far different from that: As the trial judge seems to have found, she was engaged in canvassing and selling books and booklets from house to house without a permit at any hour of the day or night, and as the trial judge remarked, to the disturbance of the peace and quiet of citizens in their homes, and to their possible danger in having strangers, unknown to the police, going from house to house by day and night, a condition which the ordinance was designed to prevent, since it provided in effect that the permit when granted should be limited to daylight hours.

And here again attention is called to the fact that the defendant admitted that such ordinance was reasonable.

We, too, think that it was, and that upon the authority of the cases cited it did not unreasonably restrict or deny freedom of speech or freedom of the press, and that, there being no question here of prohibition, it was a reasonable police regulation having for its purpose a safeguard designed for the public welfare.

We find no support for the argument that the ordinance is not applicable to the defendant, or so applied is unconstitutional.

The writ will be dismissed with costs.

[fol. 35]

EXHIBIT S-2

Testimony and Identification Card

The newspapers have had much to say about Loyalty. The Associated Press, however, declines to publish the truth regarding this issue. Every fair-minded person should want to know the true facts. I would like to leave

with you some booklets which discuss problems affecting you. New political methods are everywhere. Dictators grab control of the governments and make special laws. How can you be loyal to all and still be true to God? The answers in these booklets will help you, because there is no dodging or side-stepping the issue, but straightforward Bible answers, which is what you need and want. These three booklets please read carefully, and by contributing, say, ten cents you will make it possible to print more of these which can be placed in the hands of other persons desiring truth.

[fol. 36] To Whom it May Concern:

This is to certify that Clara Schneider whose signature appears below, is an ordained minister of Jehovah God to preach the gospel of God's kingdom under Christ Jesus and is therefore one of Jehovah's witnesses; that he is sent forth by this Society, which is created and organized and chartered by law to preach the gospel of God's kingdom, and that Jehovah's witnesses are commanded to obey God by preaching the gospel, which commandments appear in the Bible at Isaiah 61:1, 2; Isaiah 43:9-12; Matthew 10:7, 12; Matthew 24:14; Acts 20:20; 1 Peter 2:21; and 1 Corinthians 9:16; and that Jehovah's witnesses are compelled to obey God rather than men. (Acts 3:23; Acts 4:19; and Acts 5:29).

That in obedience to God's commandments Jehovah's witnesses preach the gospel and worship Almighty God by calling upon the people at their homes and exhibiting to them the message of said gospel in printed form, such as the Bible, books, booklets and magazines, and thus afford the people the opportunity of learning of God's gracious provision for them.

That said witness of Jehovah is doing this work of bearing testimony before the people in strict accord with the fundamental law of the land and in obedience to God's law, which is supreme. Any kindness and consideration shown this witness of Jehovah will be greatly appreciated and is certain to call forth the blessing of the Lord upon the one showing such kindness. (Matthew 25:31-46)

Watch Tower Bible & Tract Society, C. A. Wise,
Vice-President

Name: Clara Schneider,

Address: 365 Grove St., Newark, N. J.

[fol. 37] NEW JERSEY COURT OF ERRORS AND APPEALS

THE STATE TOWN of Irvington, Respondent,

v.

CLARA SCHNEIDER, Appellant

Submitted October 28, 1938. Decided January 13, 1939.

On appeal from a judgment of the Supreme Court, whose opinion is reported at 120 N. J. Law 460.

PER CURIAM:

The judgment under review will be affirmed for the reasons expressed in the opinion of the Supreme Court.

The appellant argues that the decision of the United States Supreme Court in *Lovell vs. Griffin*, 303 U. S. 444, is dispositive of the present case. That case was determined by the United States Supreme Court after the submission of the present case to the court below and is not mentioned in the opinion. We conclude that *Lovell vs. Griffin* is not controlling in the situation presented here.

In that case the court reversed a conviction for violation of an ordinance of the City of Griffin, Georgia, which ordinance provided:

"That the practice of distributing, either by hand or otherwise, circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold, within the limits of the City of Griffin, without first obtaining written permission from the City Manager of the City of Griffin, such practice shall be deemed a nuisance, and punishable as an offense against the City of Griffin."

[fol. 38] It was held that this ordinance was void because it amounted to an infringement of the freedom of the press in contravention of the First Amendment to the Federal Constitution. It was pointed out by the court that

"The ordinance in its broad sweep prohibits the distribution of 'circulars, handbooks, advertising, or literature of any kind.' * * * The ordinance is comprehensive with

respect to the method of distribution. It covers every sort of circulation 'either by hand or otherwise'. There is thus no restriction in its application with respect to time or place. It is not limited to ways which might be regarded as inconsistent with the maintenance of public order, or as involving disorderly conduct, the molestation of the inhabitants or the misuse or littering of the streets."

The ordinance of the Town of Irvington under which the conviction below was had provides:

"No person except as in this ordinance provided shall canvass, solicit, distribute circulars, or other matter, or call from house to house in the Town of Irvington without first having reported to and received a written permit from the Chief of Police or the officer in charge at Police Headquarters."

It then goes on to provide that the Chief of Police shall satisfy himself of the good character of the applicant and that the project for which the canvass is to be made is free from fraud. The applicant is required to state certain particulars concerning himself and his project. There is a time limit fixed during which canvassing, etc., may be done.

The difference between the ordinance in the Lovell case and the one in the present case is thus quite marked. In the Lovell case there was no charge of "canvassing" or "soliciting", and, indeed, the ordinance there did not prohibit these things. The charge was simply distributing printed matter without a permit. The charge in the instant case was canvassing without a permit, in violation of the [fol. 39] ordinance. And it is stipulated that she "did call from house to house . . . and did leave or offer to leave with said occupants certain books or booklets, for which defendant solicited or accepted contributions in the form of money . . ."

We are dealing here with the validity of the ordinance only insofar as it requires a permit for canvassing within the municipality. We deem this to be a valid exercise of the police power to promote the safety and welfare of the people. A municipality may protect its citizens against fraudulent solicitation, and when it enacts an ordinance to do so, all persons are required to abide thereby. The ordinance in question was evidently designed for that purpose and we

do not think it violates the federal constitution under the rule laid down in the case of *Lovell vs. Griffin*, supra.

The judgment is affirmed.

[fol. 40] NEW JERSEY COURT OF ERRORS AND APPEALS

On Appeal Remittitur

THE STATE TOWN of Irvington, Plaintiff-Respondent,

v.

CLARA SCHNEIDER, Defendant-Prosecutrix

This matter coming on to be heard at the October Term, 1938, before this Court on an appeal from the New Jersey Supreme Court, and the Court having inspected the transcript and proceedings of the New Jersey Supreme Court, returned with the appeal in this cause, and the reason for reversing the judgment below, and having read the briefs of counsel therein, and having duly considered the same;

It is on this 13th day of February, 1939, Ordered, that the judgment of the New Jersey Supreme Court be in all things affirmed, with costs; and that the record and proceedings be remitted to the New Jersey Supreme Court to which Court the said cause had been remitted on the judgment of the New Jersey Supreme Court, to be therein proceeded with according to law and the practice of the said Court.

Entered February 8th 1939. On motion of Meyer Q. Kessel, Attorney for Plaintiff-Respondent.

Thomas A. Mathis, Clerk.

Filed Feb. 8, 1939.

[fol. 41] NEW JERSEY COURT OF ERRORS AND APPEALS

THE STATE TOWN of Irvington, Respondent,

v.

CLARA SCHNEIDER, Appellant

Certificate

I, Thomas A. Mathis, Clerk of the New Jersey Court of Errors and Appeals, do hereby certify that the foregoing

is a true and correct transcript of the record of said Court of Errors and Appeals in the above entitled matter.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed at the City of Trenton, in the State of New Jersey, this 24th day of February in the year of our Lord one thousand nine hundred and thirty-nine, and of the Independence of the United States of America the one hundred and sixty-third.

Thomas A. Mathis, Clerk of New Jersey Court of Errors and Appeals. (Seal of the Secretary of the State of New Jersey.)

[fol. 42] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 3, 1939

The petition herein for a writ of certiorari to the Court of Errors and Appeals of the State of New Jersey is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 43,192. New Jersey, Court of Errors and Appeals. Term No. 707. Clara Schneider, Petitioner, vs. The State (Town of Irvington). Petition for a writ of certiorari and exhibit thereto. Filed February 27, 1939. Term No. 707, O. T., 1938.

(1039)